IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 689 of 2005.

Judgement reserved on:

Date of decision : April 5, 2006.

Smt. Tara Devi Katoch …….. Appellant.

Versus

Vijay Kumar ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? No

For the appellant: Mr. Ramakant Sharma, Advocate.

For the respondent: Mr. Romesh Verma, Advocate.

Surjit Singh J. (Oral).

Heard and gone through the record. This appeal is by a tenant against whom a decree for possession by way of ejectment, after service of notice under Section 106 of the Transfer of Property Act, has been passed by the trial court and affirmed by the District Judge.

Main grievance of the appellant- tenant is that the respondent- plaintiff was not the sole land-lord, and, therefore, the suit without impleadment of other co-landlords was not competent and maintainable. Also, it is urged by the learned counsel that notice was defective.

Whether reporters of local Papers may be allowed to see the judgment? Yes

Facts which need to be noticed for appreciation of the aforesaid contention may be summed up thus. Respondent-plaintiff Vijay Kumar, filed a suit for possession of certain shop pleading that he had let out that shop through writing Ex. P-1 to the appellant- defendant on monthly rent of Rs. 500/- and that through a notice dated 8.1.2002 tenancy had been terminated and the appellant- defendant had been called upon to deliver the vacant possession by 31st January, 2002, but despite timely service of the notice, she had not vacated the premises.

Appellant- defendant contested the suit. Various preliminary objections were raised. It was alleged that notice was defective, inasmuch as the date for vacation of the premises was mentioned as 31st January, 2001 while the notice itself was 8th January, 2002. On merits, it was alleged that the shop was owned by various persons, who were the legal heirs of late Sh. Arjun Dass and respondent- plaintiff being one of those legal heirs, he was simply a co-owner and without being authorized by other co-owners or without impleading other co-owners, he could not have sued for possession nor could he had served the notice terminating the tenancy.

Admittedly the appellant- defendant executed the writing Ex. P-1 dated December, 2000 in favour of respondent- plaintiff Vijay Kumar. The plea taken by the appellant- defendant in the written statement is that her signature was obtained on the said writing deceitfully, inasmuch as she was told that the writing would be signed by Smt. Shanti Devi, the mother of the plaintiff- respondent in the capacity of the lessor because before the execution of the aforesaid writing, it was said Smt. Shanti Devi, who had created the

initial lease in favour of the appellant- defendant. Respondent-plaintiff appeared in the witness box and testified that writing was executed by appellant- defendant. He denied the suggestion put to him in the cross- examination that he had procured the signature of the appellant- defendant by practising the alleged deceit. The appellant- defendant herself did not enter the witness box to controvert the testimony of the plaintiff- respondent or to prove her allegations of deception and therefore, an adverse inference is required to be drawn against her, as regards this plea.

Proof of Ex. P-1 means that the tenancy was created by Sh. Vijay Kumar alone. If that is so, appellant- defendant cannot deny that respondent- plaintiff is the landlord, in view of the statutory estoppel that a tenant cannot deny the title of the landlord.

As regards the contention that the notice is defective, the date given in the notice for vacating the premises, no doubt reads as 31st January, 2001, whereas it should have been 31st January, 2002, but this appears to be a case of typographical error. Such errors cannot be pressed into service to defeat the substantial rights of the parties.

In view of what has been stated above, no question of law, much-less a substantial question of law arises. The appeal is dismissed.

CMP No. 1179 of 2005.

Interim order dated 12.1.2006 is vacated and the application is dismissed in view of the dismissal of the main appeal.

April 5, 2006. **(Surjit Singh),**
(Hem) **Judge.**